WP(C) 1370/2007
BEFORE
HON'BLE JUSTICE B.K. SHARMA

Heard Mr. Konwar, the learned counsel for the petitioners, Ms. M. Gogoi, learned Standing counsel, Education Department and Ms. Verma, learned Standing counsel, Finance Department.

2. Shortly put the facts necessary to deal with the contentions raised are that the Petitioner no. 1 is an association of non- provincialised Junior College Teachers and in the instant proceedings espouse the cause of the Junior Colleges at Petitioner nos. 2 to 8. Pursuant to the order dated 13.2.2004 passed by this Court in W.P.(C) No. 922/2004, the petitioner colleges were granted concurrence by the Government of Assam necessary for recognizing the same for the purpose of sanctioning grants -in- aid. According to the petitioners these colleges are imparting education to the students of educationally backward classes. The dates of Government concurrence for the petitioners colleges range between 17-8-2005 and 29-8-2005.

3. The Government of Assam(Secondary & Elementary Department) on 22-2-2006 conveyed the sanction of the government for an amount of Rs. 14,21,530/- as financial assistance to 10(ten) non- Government Junior Colleges in the district of Kamrup. Similar orders were passed for different amounts for 15(fifteen) Junior Colleges in the district of Barpeta and Dhemaji. The petitioners have alleged arbitrariness and discrimination in the matter of selection of Junior Colleges for financial assistance. They have maintained that though in terms of the relevant policy the selection is to be made on the basis of seniority, need and performance requiring reasons to be recorded in cases of departure therefrom, the respondent authorities on extraneous considerations have picked up Junior Colleges without observing such requirements. They have also referred to the judgment and order dated 30.9.2005 of this Court passed in W.P. (C) No. 4278/2004, reiterating that in the matter of according financial assistance to the institutions in terms of the policy evolved therefor, the state authorities were required to adhere to the basic criteria of seniority and in the event of marking an exception thereto, to record the detailed reasons therefor.

4. The petitioners have averred that in all presently 95(ninety five) Junior Colleges have been identified which include their institutions and though the required funds have been made available, at the stage of release thereof, they are sought to be excluded from consideration. Judicial intervention has therefor been sought for to restrain the respondents authorities from finalizing the list of educational institutions to the exclusion of the petitioner Junior Colleges and for a mandamus to the state respondents to include them for the grant of financial assistance for the year 2007. No counter has been filed on behalf of the state respondents to controvert the above sworn statements.

5. The learned counsel for the petitioner has reiterated the above. The learned counsel for the respondents have fairly submitted that in the face of the Government policy and the parameters contained therein for determining the eligible educational institutions to be entitled to the financial assistance comprehended therein, the respondent authorities are obliged in law to conform to the same.

6. I have extended my consideration to the rival submissions and the materials available on record. This Court amongst others in W.P.(C) No. 4278/2004, All Assam Recognised Middle English Teachers Association versus the State of Assam, and others, while exhaustively dwelling on the Cabinet Memorandum dated 9-6-2005 engrafting the policy to provide financial grant to educational institutions and the criteria adopted therefor had ruled that the selection of such instituti

ons would be primarily on the basis of seniority as per the date of recognition/ concurrence as applicable deviation wherefrom would be permissible in respect of institutions with disadvantageous locations like border areas, char areas, tea and ex-tea garden areas, areas predominated by weaker sections of the society like SC, ST, OBC and minorities, where in the opinion of the Government, there is urgent need to set up educational institutions. Relaxation on this count may also be considered keeping in view the specific need for girls education in some areas. Performance of the educational institutions and their enrolments shall also be taken into account into in selection of the schools for financial assistance. This Court, however, made recording of reasons to be obligatory in case of flexing of the fundamental criteria of seniority in the above eventualities. Incidentally, a Division Bench of this Court has also upheld the said determination.

In the above factual premise, there is no escape from the conclusion that for ascertaining an educational institution to be eligible for the financial grant, the primary touchstone would be that of seniority thereof determinable by the date of its establishment/recognition/concurrence, as the case may be and that at the other conditions permitting relaxation thereof, can be resorted to for reasons to be recorded.

7. In the above view of the matter, I consider it to be in the interest of justice to close this petition with the direction to the state respondents, more particularly, the Commissioner and Secretary, Government of Assam, Education Department, Commissioner and Secretary, Government of Assam, Department of Finance and Director of Secondary Education, Assam to cause immediate steps to be taken to examine the petitioners claim in the touchstone of the extant Government policy and if on such scrutiny, these are found to satisfy the conditions of eligibility mentioned therein, they would take appropriate decision(s) to redress their grievances in accordance with law. This exercise as ordered above should be completed within a period of 6(six) weeks from the date of receipt of the certified copy of this order. No costs.